

**OPINION
65-247**

July 7, 1965 (OPINION)

Mr. Paul Agneberg

State's Attorney

Towner County

RE: Schools - Bonded Indebtedness - Removal of Buildings

This is in reply to your letter of June 23, 1965, in regard to removal of residence buildings from bonded school districts by Indians to situses on the Indian Reservation.

You call our attention to section 40-01-08 of the North Dakota Century Code providing:

REMOVAL OF BUILDING WHEN TAXES AND SPECIAL ASSESSMENTS OR SHARE OF BONDED INDEBTEDNESS ARE DUE - LIEN - MISDEMEANOR. No person shall remove from any lot or tract of land in any municipality any building not assessed as personalty and not exempt from taxation until after the taxes and special assessments then due have been paid, nor until the owner shall have paid into the sinking fund for the retirement of any bonded indebtedness of the municipality an amount equal to the just share of the tax which would then be required against the property in said municipality to pay the principal outstanding, less amount in sinking funds, of the bonded indebtedness of such municipality. If the building is removed without the payment of the taxes and special assessments and pro rata share of bonded indebtedness, such taxes, special assessments and pro rata share of bonded indebtedness shall be a lien on the building notwithstanding its removal as well as upon the lot, lots, tract, or tracts of land from which the same was removed. This section shall not apply where a building is removed to permit the erection or installation of improvements equal or greater in value than the building removed. Any person violating the provisions of this section is guilty of a misdemeanor."

In the instances you mention the buildings are removed from village property where apparently there is no municipal bond issue outstanding, but where there is a school district bond issue outstanding.

We agree with your thought that insofar as "municipality" is defined by subsection 1 of the North Dakota Century Code as including cities, towns and villages, and excluding any other political subdivision, that the above-quoted statute would not apply to your situation.

While not applicable under the current reading of the above-quoted statute, insofar as the 1953 amendments specifically provide for bonded indebtedness to be included, we note the following in an

opinion of this office of August 7, 1937, at page 115 of the Report of the Attorney General for the period July 1, 1936, to June 30, 1938:

* * * *

Under the present law no one can lawfully remove a building from a city or village without having first paid the taxes already levied and assessed thereon. If such a building is removed, it would no longer be taxable in its former taxing district. The remaining property in the district would, of course, have to be taxed additionally to make up the difference in value. The bondholders would have no claim on the property removed but would expect the remaining property to be taxed sufficiently to take care of the bond. * * * "

Looking to the source of the school district bond tax to which you refer we find section 21-03-15 of the North Dakota Century Code which provides:

DIRECT, ANNUAL, IRREPEALABLE TAX. The governing body of every municipality issuing bonds under the authority of this chapter, after the sale of such bonds and before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. The municipality shall be and continue without power to repeal such levy or to obstruct the collection of said tax until such payments have been made or provided for. A copy of such resolution or ordinance shall be certified to and filed with the county auditor, and after the issuance of such bonds, such tax from year to year shall be carried into the tax roll of the municipality and collected as other taxes are collected. No further annual levy for that purpose shall be necessary. When insufficient funds are available to pay the matured bonds, the county auditor shall notify the governing body of such municipality of such deficiency and the governing body thereupon may levy a direct tax to pay said deficiency and interest thereon. The manner of levy, certification and collection of said tax shall be the same as provided by this section of the levy, certification and collection of taxes by this section. * * * "

Said section 21-03-15 obviously does provide for a twenty-year levy of such taxes when considered in connection with the remainder of said Chapter 21-03 with regard to school district bond issues. However, under the terms of that statute the tax must be spread annually and becomes due with other taxes spread.

In State v. Divide County, 68 N.D. 708, at page 718, of the North Dakota Reports, we find the Supreme Court of this state stating:

* * * * Taxes levied and not due are not liens upon the real estate, and after the state acquires title to the land, no tax lien can attach so long as the state holds it. It is not subject to taxation, and the taxes that ordinarily thereafter

would have become due can not exist. Therefore, such taxes must be cancelled and abated of record."

For practical purposes this would appear to be in line with the conclusion of the Supreme Court of this state in State v. Rasmusson 71 N.D. 267, wherein it was held that tax levies made by an old district for debt service do not follow detached territory, except insofar as same may be relevied by an arbitration board.

To conclude it is our opinion that in view of the above in the type of circumstance you outline, it is going to be impracticable to attempt to collect the proportionate share of bonded indebtedness that otherwise would be borne by the removed property and that by reason of the terms of section 21-03-15, quoted above, in the words of the former opinion of this office quoted above: "The bondholders would have no claim on the property removed but would expect the remaining property to be taxed sufficiently to take care of the bonds."

HELGI JOHANNESON

Attorney General